Coronet Foods, Inc. *and* General Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 697, a/w International Brotherhood of Teamsters, AFL–CIO. Cases 6–CA–21051, 6–CA–21251, 6–CA–21737, and 6–CA–21091

January 10, 1997

SECOND SUPPLEMENTAL DECISION AND ORDER, REMANDING IN PART

BY MEMBERS BROWNING, FOX, AND HIGGINS

On April 19, 1996, Administrative Law Judge Steven M. Charno issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.[1] The General Counsel filed cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order, subject to severing the following two issues and remanding them to the judge for further appropriate action.

1. The judge rejected those portions of the General Counsel's backpay claims for employees Richard Melvin, Mark Hilliard, and Randall Reed that related to reimbursement for equipment and moving expenses that the three allegedly incurred during the backpay period.[4] In so doing, the judge agreed with the Respondent that, under *Nor-Cal Security*, 270 NLRB 543, 552 (1984), an adverse inference should be drawn against the three employees because they failed to produce receipts for their respective claimed expenses. We disagree. An employee's backpay claim for equipment or moving expenses need not be rejected for lack of supporting documentation, especially "where, as here, it was Respondent's unlawful conduct which caused the discriminatees to seek interim employment which resulted in expenses they would not have ordinarily incurred." *Aircraft & Helicopter Leasing*, 227 NLRB 644, 645 (1976). See also *United Aircraft Corp.*, 204 NLRB 1068 (1973). In the absence of documentation, it is for the judge to determine, based on the credibility of the claiming employees, as well as other record evidence, whether the equipment and moving expenses were incurred and whether the employees are entitled to reimbursement. See, e.g., *Best Glass Co.*, 280 NLRB 1365, 1370 (1986). Because the judge did not make these determinations, we remand this portion of the case to him for further findings, conclusions, and recommendations.

2. Based on the General Counsel's computations, in which the Respondent concurred, the judge found that the backpay of employee Arley Nemo should be reduced by $5000 in the category of interim employment transportation expenses.[5]

In his cross-exceptions, the General Counsel seeks to modify this reduction to $3022, asserting that the $5000 figure was based on incorrect calculations, and that Nemo's transportation expenses were not properly apportioned over the relevant quarters that he worked for interim employer Tidewater Construction.[6] The Re-

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The judge found that employee Russell Haught should be denied backpay for the period from June 12 to August 2, 1988, on the basis that there was no record evidence that Haught sought work during this period. We agree and note that: (1) Haught did not testify about any job searches during this period; (2) G.C. Exh. 19, which is a listing of Haught's job searches, begins with entries after this period; and (3) Haught affirmatively testified that he did not recollect any job searches other than those enumerated on G.C. Exh. 19.

[3] We agree with the judge that there is no merit to the Respondent's argument that backpay for the discriminatees should be tolled on January 1, 1990, when Tom Padden became its president or, alternatively, on September 30, 1991, when the Respondent terminated its subcontract with Temperature Control Carriers (TCC). Thus, although the judge credited Padden that he desired to close the transportation operation, the judge found that Padden further testified that his authority was subject to the veto of the Respondent's owner, Long. Long did not testify and, as found by the judge, the owner had never previously considered the inadequacies of the transportation department to be a basis for shutting it down. Rather, Long's 1989 decision to close the transportation department was unlawfully motivated.

Further, as found by the judge, the inadequacies in the transportation department were completely remediable. These inadequacies could have been eliminated or ameliorated through timely and good-faith bargaining with the Union. And, in the absence of the unlawful closure, the Respondent might have adopted some or all of the expedients cited by the judge which would thereby have rendered wholly speculative Padden's later avowed intent to close the department.

[4] Specifically, Melvin testified that he spent $150 on tools required for interim employment, Hilliard claimed that he spent $240 on required work shoes, and Reed testified that he incurred $485 in moving expenses.

[5] The backpay specification had stated that Nemo drove an additional 90 miles per day, 5 days per week, when working for interim employer Tidewater Construction. At the hearing, however, Nemo testified that his employment with Tidewater averaged only 4 days per week.

[6] The General Counsel argues that his earlier calculations were incorrectly premised on a 100-mile-per-week reduction—when only 90 miles should have been reduced—and on a reduction from Nemo's gross backpay from Tidewater, rather than apportioning it over the appropriate quarters worked.

spondent objects, arguing that the parties stipulated to the amount of reduction and that the General Counsel should not now be permitted to claim that this stipulation was in error. In response, the General Counsel contends that there was no stipulation, and further asserts that the Respondent does not claim that the modified travel-expense reductions are erroneous.

We agree with the General Counsel that the parties did not stipulate as to the amount that Nemo's travel expenses should be reduced. Indeed, the reduction issue was handled by the parties exclusively in their successive posthearing briefs to the judge. However, because the judge has not had the opportunity to pass on the General Counsel's revised calculations—to which the Respondent now objects—we remand this issue to the judge for further findings, conclusions, and recommendations.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Coronet Foods, Inc., Wheeling, West Virginia, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names,[7] with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Jerry Bane	$81,208
Estate of Michael Fazio	54,347
Estate of Michael Fazio (life insurance)	10,000
Chuck Goudy	89,231
G. Mike Huff	126,254
Bryan Kalinski	43,828
Kenneth Marshall	52,518
Richard Melvin	68,658
John McCave	10,636
John McDonald	60,897
Michael Richmond	25,694
David Rinkes	95,092
David Rinkes (medical expenses)	4,000
Thomas Rinkes	33,816
Thomas Rinkes (medical expenses)	3,452
Spencer Risden	68,024
Mark Smith	43,872
Mark Smith (medical expenses)	1,745
Arnold Trouten	73,788
Larry Young	48,566
William Mayes	22,584
Rickie Pritt	49,430
Randall Reed	21,359
John Wodusky	37,794
Russell Haught	19,611
Mark Hilliard	38,730
Charles Logsdon	26,159
Arley Nemo	26,951
Alex Proger	14,984
TOTAL:	$1,253,228

IT IS FURTHER ORDERED that the Respondent shall take the following affirmative action:

1. Offer the above-named employees immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

2. Restore the operations of its transportation department discontinuing, if necessary, its subcontracting agreements and operations.

3. Comply in all other respects with the Order in the above-captioned cases issued on March 22, 1990, by Administrative Law Judge Richard A. Scully and adopted by the Board by Order issued September 30, 1991.

Barton A. Meyers and *David L. Shepley, Esqs.*, of Pittsburgh, Pennsylvania, for the General Counsel.

Arthur B. Muchin, Neil P. Stern, and *Robert T. Bernstein, Esqs. (Laner, Muchin, Dombrow, Becker, Levin & Tominberg, Ltd.)*, of Chicago, Illinois, for the Respondent.

SUPPLEMENTAL DECISION

STEVEN M. CHARNO, Administrative Law Judge. On September 30, 1991, the Board issued an Order[1] directing Coronet Foods, Inc. (Respondent) to restore its transportation department and to reinstate and make whole certain of its former employees. By judgment entered January 5, 1993,[2] the Court of Appeals for the District of Columbia Circuit enforced the backpay provisions of the Board's 1991 Order. A backpay specification was issued on February 10, 1994, which alleged the amounts of backpay due prior to September 30, 1993, and set this matter for hearing. Respondent's answer contests the accuracy of the specification.

A hearing was held before me in Wheeling, West Virginia, on July 17–21 and October 16–18, 1995. Initial briefs were filed by the General Counsel and Respondent under extended due date of February 26, 1996, and reply briefs were filed by the parties on March 18, 1996.

FINDINGS OF FACT

Respondent runs an around-the-clock, 7-day-a-week business processing and delivering fresh produce to customers with varying product and delivery requirements. Prior to May 1989, Respondent directly employed truck drivers, mechanics, and loaders and used its own transportation department to deliver its products. On April 29, 1989, Respondent shut

[7] Pursuant to the remand, the judge will determine whether additional moneys are owed employees Melvin, Hilliard, Reed and Nemo, as discussed above.

[1] 305 NLRB 79.

[2] 981 F.2d 1284.

down its transportation department and subcontracted its delivery operations to an outside company. In the underlying proceeding in which Respondent was held liable for various unfair labor practices, Judge Scully found that Respondent (1) "closed its transportation department because the employees opted for representation by the Union" and (2) Respondent did not demonstrate that it would have subcontracted delivery operations absent employee support for the Union.[3]

I. RESTORATION OF THE TRANSPORTATION DEPARTMENT

Respondent asserts as an affirmative defense that the ordered re-establishment of its transportation operation would constitute an undue burden. In support of this assertion, Respondent offered the testimony of a transportation consultant and expert on motor carrier operations, William Jaquith, who indicated that Respondent could reinstate its transportation department either by operating a private fleet or by establishing a common carrier operation comparable to that run by Logistics Management, Inc. (LMI), Respondent's present transportation subcontractor. Jaquith testified that, if Respondent decided to operate a private fleet, it would have to (1) retain a transportation consultant to supervise the transition, (2) terminate its existing contract with LMI, and (3) take the following actions to replace services presently provided by LMI: (a) negotiate for equipment with a national leasing firm such as Penske, the firm used by LMI, (b) secure a source of fuel and emergency breakdown service like that provided by Penske for LMI, (c) hire a transportation management team comparable to that of LMI, (d) acquire liability and cargo insurance at the levels held by LMI, (e) institute driver training and drug testing programs comparable to those run by LMI's subcontractors, (f) purchase a computer system comparable to LMI's in order to control costs, monitor regulatory compliance, and dispatch traffic, (g) locate a terminal, and (h) arrange for a backup carrier to prevent service failures during the 6-month transition period. Jaquith further testified to the effect that, if Respondent wished to operate as a motor common carrier, it would have to (1) take all the steps necessary to run a private fleet, (2) retain a sales-oriented general manager and begin soliciting backhaul traffic,[4] (3) apply for interstate and intrastate operating authorities, and (4) acquire workers' compensation insurance.

Respondent's fears concerning the costs and problems associated with reinstating private carriage do not appear to be borne out by the record. Respondent's "cost plus" contract with LMI provides that Respondent will pay LMI's costs for equipment leasing expenses (including those relating to fuel and emergency service), salaries and benefits of a management team (terminal manager, dispatcher, and clerical personnel), driver training and testing expenses, terminal rental and insurance costs.[5] The record contains no probative evidence that (1) Respondent could not acquire all of these items either from LMI's suppliers or from similar sources or (2) Respondent's cost for these items would exceed the amount that Respondent presently pays LMI for them. Respondent could purchase a computer system adequate for all operational and recordkeeping needs for $100,000 to $120,000,[6] the record is bare of probative evidence of any additional expense which might be attributable to the retention of a backup carrier.

Similarly, Respondent's apprehensions concerning the costs and difficulties of establishing itself as a motor common carrier are not supported by the preponderance of evidence. Jaquith gave his expert opinion that Respondent (1) would lose much of the revenue generated by its present backhaul traffic when it terminated its contract with LMI and (2) would therefore have to hire a sales-oriented general manager for $150,000 per annum. That testimony cannot be relied on because it is not supported by the probative evidence of record. Respondent's president, Thomas Padden, credibly testified[7] that he was the person who solicited and arranged for virtually all of LMI's backhaul traffic and that "all LMI does is perform the service and see that the paperwork is filled out."[8] Accordingly, I find insufficient evidentiary basis to conclude that Respondent would lose any of this traffic on terminating its relationship with LMI. As the individual responsible for acquiring backhaul traffic is already in Respondent's employ, Respondent need not hire a general manager schooled in marketing and sales to secure such traffic. I infer from Jaquith's testimony that a general manager responsible solely for transportation would be far less costly than $150,000 a year. The remaining costs of becoming a common carrier have not been shown to be significant: (1) the expense of securing the necessary motor carrier operating authorities is between $2000 and $5000[9] and (2) the cost of workers' compensation insurance would not exceed the amount Respondent presently pays LMI.[10]

Finally, Respondent's potential economic burden from reinstating its transportation department must be evaluated in the context of the economic benefits flowing from (1) the original shut down of that department and (2) the termination of its contract with LMI. When Respondent sold its fleet in 1989, it realized a taxable gain of $332,000.[11] Respondent's "cost plus" contract with LMI provides for the payment of a 12-percent profit margin in addition to reimbursing LMI for all direct costs incurred by the latter. Termination of that contract would eliminate profit margin payments to LMI and result in annual savings to Respondent of approximately

[3] 305 NLRB at 91.

[4] When a carrier transports cargo from point A to point B, securing "backhaul" traffic from point B to point A is highly desirable in order to defray the fixed costs associated with the return trip and to add to the profit margin.

[5] Schedule B of the contract so provides.

[6] Jaquith so testified.

[7] Padden gave detailed, considered testimony which was, at times, clearly against Respondent's interest. For this reason and based on my observation of Padden's demeanor while testifying, I generally credit his testimony in this proceeding.

[8] With respect to the sole, limited exception (the transportation of westbound traffic in conjunction with eastbound California lettuce shipments to Respondent), LMI's president admitted that his continued carriage of the westbound traffic would not be feasible without an ability to carry Respondent's lettuce eastbound. It is therefore possible that Respondent could solicit and retain carriage of the westbound traffic.

[9] Jaquith so testified.

[10] This finding is based on the parties' stipulation which contradicts the assumption utilized by Jaquith as a basis for his estimate concerning the cost of workers' compensation insurance.

[11] The parties so stipulated.

$300,000.[12] It would appear that these benefits significantly outweigh Respondent's costs of acquiring operating authority, a computer system, a transportation consultant and a transportation-oriented general manager. Even if the costs of reestablishing the transportation department could be shown to outweigh the benefits of doing so, the absence of any evidence of Respondent's total worth or of the size or profitability of its operations makes it impossible to determine whether those costs would constitute an undue burden. On balance, I find that Respondent has not met its burden of showing that the problems and costs associated with reinstatement of its transportation department impose an undue burden on it.[13]

II. TOLLING OF BACKPAY

Respondent asserts as a second affirmative defense that its backpay obligation to its drivers, mechanics, and loaders should be tolled because the company would have terminated its transportation department sometime after May 1989 for nondiscriminatory reasons. Padden testified in the underlying proceeding that, if he had then had the authority, he would have terminated the transportation department for valid business reasons prior to the advent of union organizing. Judge Scully found this testimony credible but determined that Howard Long, Respondent's owner, had exclusive authority to eliminate the transportation department and Long had done so for discriminatory reasons. In the instant proceeding, Padden testified credibly that he would have eliminated the transportation department for nondiscriminatory business reasons when (1) he first had the authority to do so on becoming Respondent's president on January 1, 1990, or (2), in the alternative, when he terminated the relationship with one transportation subcontractor and contracted with LMI on September 30, 1991. The reasons cited by Padden were (1) inadequate equipment, (2) maintenance and emergency breakdown problems, (3) inefficient recordkeeping relating to regulatory requirements, (4) routing and inventory problems, (5) safety program deficiencies, and (6) inadequate terminal facilities.

While I credit absolutely Padden's statement of his intention to eliminate Respondent's in-house transportation department, I cannot find that statement, standing alone, dispositive of the issue of whether Respondent would have shut down the department in 1990 or 1991. The record suggests myriad possibilities that might have prevented the effectuation of Padden's intention and, thus, rendered such an effectuation wholly speculative. As is evident from the discussion in the preceding section, the deficiencies in Respondent's operation cited by Padden are completely remediable. Dealing with an with an equipment leasing firm can solve equipment, maintenance, and breakdown problems; proper use of a computer system can eliminate routing, inventory, and recordkeeping deficiencies; outside contractors run safety and training programs; and there is no probative evidence that adequate terminal facilities are unavailable to Respondent. If Respondent had adopted some or all of these expedients after April 1989, Padden might have felt no need to subcontract Respondent's delivery operations. More importantly, if Respondent had acted lawfully by recognizing and bargaining with the Union in 1989, a harmonious and productive bargaining relationship might have ameliorated or ended its transportation difficulties. Finally, Padden's authority in 1990 to shut down the transportation department was subject to veto by Respondent's owner,[14] and Long had never considered the department's undisputed inadequacies to be a reason to shut it down. In sum, any nondiscriminatory shutdown of Respondent's transportation department and subcontracting of its delivery operations is too speculative a possibility to merit reliance.[15]

III. APPROPRIATE BACKPAY FORMULAS

The General Counsel contends that the claimants' backpay should be based on a projection of their pretermination earnings, while Respondent maintains that the appropriate measure is the earnings of those employees who replaced the claimants. In support of its position, Respondent cites *Manhattan Graphic Productions*, 282 NLRB 277, 279 fn. 6 (1986), for the proposition that projected pretermination earnings are an inappropriate measure of backpay where nondiscriminatory changes in a company's operations would significantly affect the discharged employees' earnings. The situation before me differs from that cited in that the changes that actually took place in Respondent's operations in this case were the direct result of antiunion animus. Based on the foregoing, I conclude that (1) the level of post-April 1989 earnings by Respondent's replacement employees is a result of Respondent's discriminatorily motivated subcontracting of its transportation operations[16] and (2) replacement employee earnings are not, therefore, an appropriate measure of backpay. Accordingly, I further conclude that, of the methods to determine backpay proposed by the parties in this case, projected pretermination earnings is the "most accurate." See *W. L. Miller Co.*, 306 NLRB 936 fn. 1 (1992).

A. *Drivers*

The 16 men in Respondent's driver work force were paid on a mileage basis. The General Counsel's formula for calculating driver backpay took each driver's gross earnings during a representative period prior to termination, annualized those earnings through the backpay period and adjusted them to take into account mileage rate increases received by the subcontractor's drivers.[17] This methodology has the virtue of reflecting disparities in the earnings of the

[12] This figure is based on the General Counsel's annualization of LMI's billings to Respondent for the second, third, and fourth calendar quarters of 1992 and the second calendar quarter of 1993.

[13] I have been unable to locate any authorities in contravention of Respondent's concession that, "[i]n virtually every . . . undue burden case, the employer claimed undue burden based primarily on the out-of-pocket costs which had to be incurred." Posthearing brief of the Employer at 55.

[14] Padden so testified.

[15] The finding in text also appears dispositive of Respondent's contention that "backpay should be tolled for the former Coronet mechanics as of January 1, 1990." See also fn. 21, infra.

[16] All of the changes in Respondent's transportation operations which affected replacement drivers and mechanics (i.e., those employed by Respondent's subcontractor) were a direct result of its discriminatory decision to subcontract. Similarly, the elimination of driving assignments for Respondent's replacement loaders resulted from its unlawful subcontracting decision.

[17] Compliance Officer Clyde Graham credibly so testified without controversion.

various drivers and avoids the following pitfalls of using replacement employee earnings in this case: (1) an inability to identify individual replacement employees who performed the same or substantially similar job duties as did the claimants, (2) a lower average level of individual backpay caused by the fact that Respondent's subcontractors employed a larger number of drivers than had Respondent, and (3) the absence of any replacement employee earnings' data for the period January 1 through September 30, 1991. On consideration, I find that the General Counsel's formula is designed to produce a reasonable approximation of what is owed the drivers in this proceeding. See *Intermountain Rural Electric Assn.*, 317 NLRB 588, 591 (1995).

The General Counsel's methodology restricts the offset of interim income against backpay liability to the quarter in which the income was earned. Respondent contends that such a restriction is inappropriate. The General Counsel replies, and I agree, that this practice is appropriate under the holding in *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

B. *Mechanics*

Respondent's four unlawfully terminated mechanics were paid by the hour. The General Counsel's formula for calculating mechanic backpay used the hours each mechanic worked during a representative period prior to termination, adjusted those earnings to reflect ensuing companywide wage increases and projected the resulting product over the backpay period.[18] This formula reflects the varying amounts of overtime worked by different mechanics and does not suffer the following defects of Respondent's suggested method of computing backpay: (1) the absence of any replacement employee earnings' data for the period prior to October 1, 1991,[19] and (2) a failure to accurately represent the actual earnings of the replacement mechanics.[20] I therefore find the General Counsel's formula to be designed so as to reasonably approximate the mechanics' backpay owed by Respondent. See *Intermountain Rural Electric Assn.*, supra.

Respondent also contends that the backpay of the four terminated mechanics should be tolled as of January 1, 1990, because their positions would have ceased to exist because Respondent' would have eliminated its transportation department on that date. Given my finding that such an elimination must be regarded as speculative on the record before me,[21] I must reject Respondent's contention concerning the mechanics.

C. *Loaders*

The five loaders terminated by Respondent were also hourly employees. The General Counsel's formula for loader backpay is based on each loader's average weekly earnings during a representative period, adjusted for overtime and modified to take into account Respondent's companywide wage increases; to the extent that loaders derived supplemental income from driving, the driving earnings were calculated on an average weekly basis and added to each loader's claim.[22] This formulation takes into account the different amounts of overtime earned by different loaders and is free of the following defects of Respondent's suggested methodology: (1) individual backpay is reduced because it is based on a lower number hours worked each week due to the fact that Respondent employed more replacement loaders than it discharged and (2) supplemental driving income is ignored.[23] Once again, I find the General Counsel's formula to be a reasoned attempt to fairly approximate the amount due Respondent's terminated loaders. See *Intermountain Rural Electric Assn.*, supra.

IV. INDIVIDUAL CLAIMANTS[24]

A. *Jerry Bane*

Respondent challenges Bane's backpay calculation on the ground that his job as a driver would have ceased to exist no later than December 31, 1991, because his straight truck route would have been eliminated in late 1991 for nondiscriminatory reasons. While Bane did not drive a tractor-trailer for Respondent prior to his discharge, it is undisputed that he held the necessary licenses to do so throughout the backpay period.[25] In addition, there is no evidence that Respondent's elimination of straight truck routes in 1991 resulted in a reduction in the number of drivers then employed by its transportation subcontractor. For the foregoing reasons, Respondent's initial argument must be rejected.

Respondent also argues that Bane should not receive backpay for the period from April 16, 1991, through December 31, 1992, on the ground that "Bane, on two separate occasions, effectively rejected substantially equivalent truck driving jobs by refusing to attend the requisite training programs." The record contains documentation of 150 attempts by Bane to find work during this period, as well as Bane's credible testimony that his job search was not limited to the documented instances and also included efforts in Ohio and Pennsylvania. After participating in an April 16, 1991 job interview with Snyder, a prospective employer, Bane chose not to attend a 6-week training program in Green Bay, Wisconsin. Bane would have been responsible for his travel expenses and believed that he would have borne the cost of the training. Similarly, after a July 1992 interview with CRST, Bane declined an offer to attend the company's training course. Bane believed that he would have been obligated to pay $1000 for CRST's course even if he was unable to secure long-term employment with the company. Bane's employment with Respondent never required him to be absent from home for more than one night at a time, and Bane had limited his search to positions which would allow him to

[18] Graham credibly so testified without controversion.

[19] Although Respondent ultimately made available replacement driver earnings data from its subcontractor for the period from May 1989 through December 1990, it inexplicably failed to make such data available for replacement mechanics. It would clearly be improper for a respondent to disclose replacement earnings information which would lower its backpay liability while withholding comparable data which would have the opposite effect.

[20] Respondent's formula multiplied the number of hours worked by the subcontractor's mechanics, not by the wage rate actually paid those mechanics by the subcontractor, but by a wage rate paid by Respondent.

[21] See sec. II, supra.

[22] Graham credibly so testified without controversion.

[23] Respondent's contention that there were no loader-drivers in its reorganized operation after April 1989 ignores the fact that the reorganization was an unlawful retaliation against the Union.

[24] Claimants are discussed in the order in which their names appear in the backpay specification.

[25] Bane credibly so testified without controversion.

spend comparable time with his family. In contrast, the training opportunities (not to mention any subsequent employment) with Snyder and CRST would require long absences repugnant to Bane. For the foregoing reasons, I conclude that the employment opportunities offered Bane by Snyder and CRST were not "substantially equivalent" in that (1) the required training entailed substantial economic risk and personal inconvenience and (2) any subsequent employment would have involved more onerous terms and conditions of employment than those of Bane's prior employment by Respondent. Accordingly, Respondent's second argument is rejected, and I find Bane's claim of backpay in the amount of $81,208 to be supported by the record.

B. *The Estate of Michael Fazio*

Respondent has raised no issue relating to deductions from the claims of the Estate of Michael Fazio for $54,347 in backpay and insurance proceeds of $10,000.[26] I find both claims to be supported by the record.

C. *Chuck Goudy*

Respondent does not urge any specific deductions from Goudy's backpay claim of $89,231,[27] and I find that claim to be supported by the record.

D. *G. Mike Huff*

Respondent does not urge any specific deductions from Huff's backpay claim of $126,254,[28] and I find that claim to be supported by the record.

E. *Bryan Kalinski*

Pursuant to the parties' stipulation, the amount of backpay claimed by Kalinski should be reduced to reflect additional interim earnings of $10,073 during the first 9 months of 1993. Respondent does not otherwise challenge Kalinski's reduced claim for $43,828,[29] and I find the claim as modified above to be supported by the record.

F. *Kenneth Marshall*

The parties stipulated to the effect that Marshall received per diem payments from Sunbelt Freight, Inc. amounting to $2040 in 1990 and $1,918.67 in 1991. Marshall testified that the payments were intended to "cover your . . . road expense." Respondent contends that these per diem payments should be included in Marshall's interim earnings during the relevant periods. The cases cited by Respondent in support of this contention distinguish "emoluments of value" which are perquisites of a position (and must be included in backpay) from payments to reimburse costs actually incurred (which are not included in backpay). See *United Garment Workers of America*, 300 NLRB 507, 509 (1990); *Electrical Workers IBEW Local 401*, 266 NLRB 870, 873 (1983). The record is devoid of evidence that the payments at issue belong in the former category. I therefore find the proposed addition to interim earnings to be inappropriate and Marshall's claim for $52,518 to be supported by the record.[30]

G. *Richard Melvin*

Respondent argues that Melvin did not exercise reasonable diligence in seeking interim employment and that his backpay should therefore be tolled from April 1, 1989, through the end of the backpay period. Melvin drove a straight truck for Respondent at the time of his separation in April 1989. After Melvin left Respondent's employ, (1) he unsuccessfully sought truck driving jobs with two companies prior to 1991, at which time he allowed his driving qualification to lapse, (2) he unsuccessfully sought employment other than as a driver with at least 21 specific employers from 1989 through 1991,[31] (3) he had self-employment earnings of $1000 in the fourth quarter of 1989, $800 in the first quarter of 1990, $200 in the second quarter of 1990 and $200 in the fourth quarter of 1990, (4) he was employed by Brand Utility Services, Inc. for 22 days during the fourth quarter of 1990, but they discharged him on learning that he was not a high school graduate, (5) he had self-employment earnings of $700 for each quarter of 1991, (6) he was briefly employed by B & E Management, Inc. during the third quarter of 1991, (7) he regularly worked with the West Virginia Unemployment Service, where he believed he had reviewed "help wanted" advertisements from Wheeling newspapers, (8) he unsuccessfully sought nondriving jobs with at least eight employers after moving to Pennsylvania in 1992,[32] (9) he was employed by Kenneth Farrell Construction for the last quarter of 1991 and the first half of 1992, (10) he was employed by Marco Contractors, Inc. during the second and third quarters of 1992 and the third quarter of 1993, and (11) he had self-employment earnings of $1215 in the first quarter of 1993, $755 in the second and $300 in the third.

The burden is on Respondent to affirmatively establish that Melvin failed to make reasonable efforts to find work. See, e.g., *December 12, Inc.*, 282 NLRB 475, 477 (1986). The demonstrated existence of "help wanted" advertisements does not meet that burden. *Arthur Young & Co.*, 304 NLRB 178, 179 (1991). As the General Counsel notes on brief, the entire backpay period must be examined to determine whether, under all the circumstances, there was a reasonably continuing search for employment. See *Cornwell Co.*, 171 NLRB 342, 343 (1968). Melvin's use of the Unemployment Service is relevant to the question of whether there was a willful loss of earnings. See *Avon Convalescent Center*, 219 NLRB 1210, 1211 fn. 5 (1975). Melvin testified without contravention to a continuing search for employment throughout the backpay period. A claimant's poor recordkeeping and recall cannot disqualify him. *December 12, Inc.*, supra. He is not required to meet the highest standard of diligence nor to exhaust all possible job leads, and any doubt about his efforts to mitigate should be resolved in his favor.

[26] See posthearing reply brief of the Employer at 24.

[27] Ibid.

[28] Ibid.

[29] See posthearing reply brief of the Employer at 25.

[30] The General Counsel's unopposed motion on brief to amend the backpay specification is granted.

[31] Although Melvin experienced significant difficulty recalling the names of companies where he sought work, he was able to supplement a written list naming 19 employers with testimony concerning 2 additional companies.

[32] Melvin's handwritten list of six employers was supplemented by his testimony about five additional companies.

Lundy Packing Co., 286 NLRB 141, 142 (1987). On consideration of the foregoing principles, together with Melvin's limited education, his efforts to find employment and the fact that he had interim earnings in 14 of the 18 quarters at issue, I find that Respondent has not demonstrated by a preponderance of the evidence that Melvin failed to mitigate his loss of income.

Respondent further contends that it should not be liable for $150 worth of carpentry tools Melvin purchased in connection with interim employment. Melvin did not produce a receipt for these tools, and I will draw the adverse inference requested by Respondent from the failure to do so. See *Nor-Cal Security*, 270 NLRB 543, 552 (1984). Pursuant to the parties' stipulations, the amount of backpay claimed by Melvin should be reduced by $1079 because of his unavailability for work during the second quarter of 1991 and by $393 to reflect additional interim earnings during the third quarter of 1993. When modified to take into account the changes set forth above, Melvin's backpay claim amounts to $68,658, which I find to be supported by the record.

H. *John McCave*

Respondent does not urge any specific deductions from McCave's backpay claim of $10,636,[33] and I find that claim to be supported by the record.

I. *John McDonald*

Respondent does not urge any specific deductions from McDonald's backpay claim of $60,897,[34] and I find that claim to be supported by the record.

J. *Michael Richmond*

Respondent does not urge any specific deductions from Richmond's backpay claim of $25,694,[35] and I find that claim to be supported by the record.

K. *David Rinkes*

Respondent has raised no issue relating to the specific claims of David Rinkes for $95,092 in backpay and medical expense reimbursement of $4000.[36] I find both claims to be supported by the record.

L. *Thomas Rinkes*

Respondent has raised no issue relating to the specific claims of Thomas Rinkes for $33,816 in backpay and medical expense reimbursement of $3,452.[37] I find both claims to be supported by the record.

M. *Spencer Risden*

Risden was injured while working as a "miscellaneous driver" for Premier Concrete, an interim employer. He was unloading concrete blocks from a boom truck when the boom chain broke and a block swung down and crushed him against the truck. As a result of his injury, he was unable to work for 18 months, during which time he received workers' compensation which is included as an offset against his backpay claim. Respondent contends that no backpay should be allowed Risden for the 18-month period and argues that he "was subject to precisely the same hazards at Coronet" as at Premier Concrete in that he occasionally used a pallet jack to unload palletized product from his tractor-trailer while employed by Respondent.[38] I find that Risden's employment for the concrete company was so dissimilar from his job as an over-the-road driver for Respondent that his disabling injury would not have occurred had not Respondent terminated him. I therefore conclude that Risden's period of disability should not be excluded from the backpay period. See *City Disposal Systems*, 290 NLRB 413 fn. 2 (1988); *American Mfg. Co. of Texas*, 167 NLRB 520, 522–523 (1967). Accordingly, I find Risden's claim for $68,024 to be supported by the record.

N. *Mark Smith*

Immediately on separation from Respondent in the second quarter of 1989, Smith commenced a period of self-employment which lasted into the third quarter of 1990. While on the stand, Smith was shown a copy of a 1989 tax return prepared by his accountant and asked if he knew what was represented by the entry "wages, $9,156." Smith replied "not right off" but supposed in response to further questioning that it might be appropriate to assume that the amount had been paid to him and not to one of his employees. Smith was later shown a 1989 payroll ledger which reflected gross earnings of $9156 by Larry Young, one of his employees. Smith then testified that the $9156 wage expense figure on his tax return referred to wages paid Young. I find Smith's explanation wholly credible and conclude that the record does not support Respondent's contention that the $9156 amount represents interim earnings which should be deducted from his backpay. I therefore find Smith's backpay claim of $43,872 and his stipulated medical expense reimbursements of $1745 to be supported by the record.

O. *Arnold Trouten*

Respondent does not urge any specific deductions from Trouten's backpay claim of $73,788,[39] and I find that claim to be supported by the record.

P. *Larry Young*

Respondent does not urge any specific deductions from Young's backpay claim of $48,566,[40] and I find that claim to be supported by the record.

Q. *William Mayes*

Mayes was injured on two occasions while working as a mechanic for the Middle Creek Garage, an interim employer. On the first, he was "redoing a truck tire and it exploded" in November 1989, which resulted in his missing 2 weeks of work. On the second occasion, he broke his leg while working on the lights on a motor home in November 1989, which caused him to miss an additional 6 weeks. Mayes re-

[33] See posthearing reply brief of the Employer at 24.
[34] See posthearing reply brief of the Employer at 25.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Risden credibly testified without controversion about using a pallet jack.
[39] See posthearing reply brief of the Employer at 25.
[40] Ibid.

ceived workers' compensation for both periods of disability.[41] Respondent argues that backpay should not be allowed for the 8-week disability period because Mayes' job as one of Respondent's mechanics would have exposed him to the same hazards which led to his injuries at the Middle Creek Garage. This argument is clearly valid with respect to the exploding truck tire, but Mayes' injury by falling from a mobile home appears to have resulted from a wholly different type of activity than that involved in his position with Respondent. Accordingly, I find that the wages for a 2-week period should be deducted from Mayes' claim for backpay. See *City Disposal Systems*, supra; *American Mfg. Co. of Texas*, supra. Specifically, I find that Mayes' claim for backpay during the fourth quarter of 1989 should be reduced by $440.[42]

Respondent argues that a claimant is only entitled to be reimbursed for those expenses of earning interim income which are greater than the comparable expenses he would have incurred working for Respondent. See *Minette Mills, Inc.*, 316 NLRB 1009, 1011, 1014 (1995). I believe that argument to be valid. The parties stipulated that Mayes incurred tool expenses of $430, broken down by quarter of purchase. The mechanics in Respondent's employ were required to purchase their own hand tools, and annual individual expenditures for this purpose were approximately $400, or $100 per quarter.[43] Mayes spent $160.55 for tools during the second quarter of 1989, the only quarter when his tool purchases at the Middle Creek Garage exceeded $100. I therefore find that his interim earnings during the backpay period should be increased, and his backpay claim decreased, by $369.[44] When modified to take into account the changes set forth above, Mayes' backpay claim amounts to $22,584, which I find to be supported by the record.

R. *Rickie Pritt*

Pritt was employed as a mechanic by Respondent. Prior to his separation in April 1989, he lived next door to Respondent's facility and walked to work. During the second quarter of 1989, Pritt secured interim employment at the Middle Creek Garage, which was located 9 miles from his home. During the second quarter of 1990, he moved his residence to Valley Grove, West Virginia, which was 5 miles from his interim employer. Pritt was motivated to move by the possible demolition of his former residence, but he would not have made the move if he had still been in a position to walk to work.[45] Accordingly, I find that Pritt's move resulted from his termination and that he is entitled to excess mileage credit after the move. The General Counsel moved to amend the backpay specification to conform to the record by modifying the excess mileage figures for the last three quarters of 1989 and the first quarter of 1990 to reflect 18 miles a day, rather than 10.[46] This change would increase the total backpay claimed by $480. The General Counsel's motion is granted.

I agree with Respondent's argument that Pritt is only entitled to offset tool expenses against interim earnings to the extent that those expenses exceed the $100 per quarter which he spent on tools while working for Respondent. The parties stipulated that Pritt had incurred tool expenses at his interim employer of $950, broken down by quarter of purchase. Pritt spent more than $100 per quarter on tools during his interim employment as follows: (1) $181.28 during the second quarter of 1990, (2) $192.82 during the fourth quarter of 1990, (3) $160.76 during the fourth quarter of 1991, and (4) $200.30 during the first quarter of 1993. I therefore find that Pritt's backpay claim should be decreased, by $615.[47] When modified to take into account the changes set forth above, Pritt's backpay claim amounts to $49,430, which I find to be supported by the record.

S. *Randall Reed*

Respondent contends that Reed moved to Florida in April 1991 for reasons which had nothing to do with seeking employment and which would have caused him to terminate his employment with Respondent. Based on this contention, Respondent argues that Reed's backpay should be tolled as of the time of the move. See *Mastro Plastics Corp.*, 136 NLRB 1342, 1350 (1960). The record reflects that Reed's move was the result of multiple motives: year-round employment as a marine mechanic, together with proximity to his parents and good weather.[48] It is uncontested that he secured interim employment in Florida soon after his arrival and increased the level of his earnings as a result of the move. For the foregoing reasons, I reject Respondent's contention and argument concerning the tolling of Reed's backpay in 1991.

Respondent further argues that Reed should not be reimbursed for claimed moving expenses of $275 in the third quarter of 1988 and $210 in the second quarter of 1991 because he failed to produce any documentation of those expenses. I will draw the adverse inference requested by Respondent from Reed's failure to do so. See *Nor-Cal Security*, supra. Accordingly, Reed's backpay will be reduced by $485.

Again, I agree with Respondent's argument that Pritt is only entitled to offset tool expenses against interim earnings to the extent that those expenses exceed the $100 per quarter which he could have been expected to spend on tools while working for Respondent. The parties stipulated that Reed had incurred tool expenses of $4500, broken down by quarter of purchase. Reed bought tools during eight quarters and spent more than $100 in each of those quarters. I therefore find that Pritt's backpay claim should be decreased by $800.

Finally, the General Counsel sought[49] with Respondent's concurrence[50] to amend the backpay specification to conform

[41] Mayes credibly so testified without controversion.

[42] During the fourth quarter of 1989, Mayes' weekly backpay rate was $376 and he received workers' compensation at a weekly rate of $156.25. The subtraction of 2 weeks' backpay and 2 weeks' interim earnings (i.e., workers' compensation) from the claim, when rounded, results in the modification appearing in text.

[43] This finding is on the uncontroverted, credited testimony of Rickie Pritt, one of Respondent's former mechanics and a claimant in this proceeding.

[44] This figure is derived by subtracting Mayes' permissible tool expense reimbursements of $60.55 from his claimed tool expense reimbursements of $430 and rounding the result to the nearest dollar.

[45] Pritt credibly so testified without controversion.

[46] Reply brief on behalf on counsels for the General Counsel to Administrative Law Judge Steven M. Charno at 21 fn. 8.

[47] This figure is derived by subtracting Pritt's permissible tool expense reimbursements of $335.16 from his claimed tool expense reimbursements of $950 and rounding the result to the nearest dollar.

[48] Reed credibly so testified without controversion.

[49] Brief on behalf on counsel for the General Counsel to Administrative Law Judge Steven M. Charno at 21 fn. 8.

[50] Posthearing reply brief of the Employer at 28.

to the record by reducing the excess mileage and toll expense figures throughout the specification by $5344 to reflect the fact that Reed moved from Wheeling Island to Moundsville, West Virginia, prior to leaving Respondent's employ. Respondent notes that Reed's claimed excess mileage reimbursement for the fourth quarter of 1992 in connection with his employment by ABC Liquors, Inc. is not supported by the record. The excess mileage figure of $98 appearing in the specification is computed on the basis of a 5-day workweek, while Reed testified that he worked a 3-day week. I therefore find that Reed's excess mileage reimbursement should be reduced by $40.[51] When modified to take into account the changes set forth above, Reed's backpay claim amounts to $21,359, which I find to be supported by the record.

T. *John Wodusky*

Respondent does not urge any specific deductions from Wodusky's backpay claim of $37,794,[52] and I find that claim to be supported by the record.

U. *Russell Haught*

Respondent contends that Haught's backpay should be tolled from June 10, 1988, the last day of his employment by Respondent as a loader-driver, to August 16, 1988, because his nonfunctioning car made it impossible for him to seek or accept employment during this period. There is no indication in the record that Haught made any effort to seek employment prior to August 2, 1988, when he began a series of telephone calls to prospective employers. Accordingly, I find that his backpay should be tolled for the 7 weeks from June 12 through July 31, 1988, which results in a $1512 reduction[53] in his backpay claim.

Next, Respondent contends that Haught's backpay should be tolled from February 17, 1989, to March 31, 1990, because he did not look for truck driving jobs during that period. Two facts are relevant to Respondent's contention. First, Haught was not employed by Respondent as an over-the-road driver but as a dockman who generally drove a shuttle truck in the Wheeling area.[54] Haught's failure to seek work as an over-the-road driver is therefore not determinative of the question of whether he sought to secure "substantially equivalent employment." Second, the record establishes that Haught sought employment as a local truckdriver with at least eight companies during 1989 and that he sought various other positions with no less than 45 additional companies during that year.[55] I therefore find that (1) Haught did attempt to find substantially equivalent employment during the period in question and (2) the record contains no basis to toll his backpay from February 17, 1989, to March 31, 1990.

Finally, Respondent contends that Haught's backpay should be tolled from October 15, 1990, to September 30, 1993, because he only held a 2-hour-per-day, 10-hour-per-week job as a motel maintenance man during most of that period and he made no effort to seek any other employment. I agree. Haught testified that pending criminal charges against two of his in-laws and his wife's fear of being left alone prevented his holding a full-time job during the period in question.[56] I therefore find that Haught was unable to hold regular employment after October 15, 1990, and that his backpay should be tolled from that date to the end of the backpay period. Accordingly, I find that Haught's backpay claim should reduced by an additional $32,274.[57] When modified to take into account the changes set forth above, Haught's backpay claim amounts to $19,611, which I find to be supported by the record.

V. *Mark Hilliard*

Respondent argues that $180 in per diem payments received by Hilliard from Tabor Environmental in August 1990 are interim earnings which should be deducted from backpay. Hilliard testified that (1) he worked 2 days for Tabor, (2) Tabor did not pay him for that work and (3) "instead of paying me they let me keep that $180 per diem." Based on this testimony, I find that the payments in question represented interim earnings and should be deducted from his backpay claim.

Respondent also argues that Hilliard should not be reimbursed for the two pairs of steel-toed shoes required annually by ENSR Corporation, an interim employer, because he failed to produce any documentation of those expenses. I will draw the adverse inference requested by Respondent from his failure to do so. See *Nor-Cal Security*, supra. Accordingly, Hilliard's backpay will be reduced by a further $240.[58]

The parties agree that backpay specification should be amended to conform to the evidence by reflecting the following new interim earnings by Hilliard: $130 from Mike Deplog in second quarter of 1988 and $490 from Paul Brown in the third quarter of 1990. At issue are payments of approximately $150 per year which Hilliard received from his father-in-law during 1991, 1992, and 1993. Hilliard testified that an unspecified portion of his work for his father-in-law was on weekends but that he also worked on weekdays when he had been "laid off for maybe a few days" by his principal employer. It is impossible to determine from the record how much of the $450 at issue was earned during layoff periods, as opposed to on weekends. I therefore conclude that Respondent failed to meet its burden on this issue and find that the payments from Hilliard's father-in-law were not shown to be interim earnings. See *NLRB v. Brown & Root, Inc.*, 322 F.2d 447, 454 (8th Cir. 1963). When modified to take into account the changes set forth above, Hilliard's

[51] This adjustment is computed by subtracting the proper excess mileage figure of $58.50 (i.e., 39 days at 6 miles per day at 25 cents per mile) from the claimed amount of $98 and rounding to the nearest dollar.

[52] Posthearing reply brief of the Employer at 25.

[53] This adjustment is computed by multiplying the number of weeks by 40 (hours in Haught's workweek) by Haught's hourly pay rate of $5.40.

[54] Haught credibly so testified.

[55] This finding is based on Haught's testimony and on his written list of attempts to secure employment, neither of which was controverted.

[56] My finding that Haught was unable to work 40 hours a week is based on his concession that he was not looking for work "[b]ecause I figured if I'd got another job that would put me eight hours and I couldn't be available at the time for if I had to go to court and then my wife being upset for other reasons."

[57] This adjustment was computed by adding the claimed backpay from the fourth quarter of 1990 through the end of the backpay period.

[58] The backpay specification reflects shoe expenses of $80 in the third quarters of 1990, 1991, and 1992.

backpay claim amounts to $38,730, which I find to be supported by the record.

W. *Charles Logsdon*

Respondent contends that backpay for Logsdon should be tolled from July 1 to August 29, 1988, on the ground that he spent between 5 and 6 hours each day taking care of his sister's children from sometime during July until the end of August. Logsdon's uncontested testimony establishes that (1) he began looking for another job "[p]retty much immediately" after his separation from Respondent in June 1988, (2) he looked at "help wanted" advertisements, (3) he sent out resumes to firms with shipping programs or laborer positions, (4) he visited several prospective employers, (5) not more than a "couple of days" passed during the period without his seeking employment, and (6) he was successful in securing interim employment with Sigels Hauling, Inc. on or about August 29, 1988. Based on the foregoing facts, I find that Respondent did not show that Logsdon failed to make reasonable efforts to secure employment during the period in question. Citing *Preterm, Inc.*, 273 NLRB 683, 697 (1984), and *Empire Worsted Mills*, 53 NLRB 683, 695 (1943), Respondent argues that the room and board provided for Logsdon by his sister during this period should be assigned a dollar value and reflected as interim earnings. I disagree; the cases cited by Respondent deal with room and board supplied by an employer as part of an employee's terms and conditions of employment and are factually inapposite to the situation before me.

Respondent also contends that Logsdon's backpay should be tolled from December 6, 1988, to April 1, 1990. During this period, Logsdon's uncontested testimony establishes that (1) he used the Ohio and West Virginia Unemployment Services, scanning their bulletin boards and computer services and documenting two job contacts each week as they required, (2) he sent out resumes, (3) he read the "help wanted" advertisements, (4) he searched for jobs 2 to 3 hours a day, 3 days a week, and (5) he never allowed more than 1 or 2 days to pass without seeking employment. Given these facts, I find that Respondent did not show that Logsdon failed to make reasonable efforts to secure employment during the period in question.

Respondent further contends that Logsdon's backpay should be tolled for the period from September 22, 1990, to August 28, 1991. During this period, Logsdon (1) was ineligible for unemployment compensation and the use he made of the Ohio and West Virginia Unemployment Services, if any, is unknown, (2) read the newspapers, (3) talked with people and listened for "word of mouth on the street," (4) "just went back to some places that I knew I had put applications in and checked on them"[59] and, (5) in an admittedly nonsystematic way, "[j]ust be out and about . . . and see a place . . . and go in and ask if they was taking applications." After being asked by a personal acquaintance whether he was interested in a job, Logsdon was referred to and began working for Ernie's Gas for Less in the third quarter of 1991. On consideration, I find that Logsdon's efforts to find a job during this period do not constitute a reasonable continuing effort to secure employment. Given the foregoing facts, I find that Logsdon's backpay should be tolled from the fourth quarter of 1990 through the second quarter of 1991, resulting in a reduction in his backpay claim of $10,429.

Finally, Respondent contends that Logsdon's backpay should be tolled for the period from August 28, 1991, through the end of the backpay period. Logsdon admitted that he did not look for work from the time he left Ernie's Gas for Less in the third quarter of 1991 until the end of the backpay period on September 30, 1993. During this time, he chose to stay home and take care of his newborn daughter while the child's mother attended professional school on a full-time basis. Accordingly, I find that Logsdon did not make any reasonable effort to seek employment after October 1, 1991,[60] and that his backpay should be tolled from that date through the end of the backpay period. I therefore find that his backpay claim should reduced by an additional $30,157. When modified to take into account the changes set forth above, Logsdon's backpay claim amounts to $26,159, which I find to be supported by the record.

X. *Arley Nemo*

The General Counsel sought[61] with Respondent's concurrence[62] to amend the backpay specification to conform to the record by reducing the excess mileage and toll expense figures throughout the specification by $5000 to reflect the fact that Nemo's workweek averaged 4, rather than 5, days. When modified to take into account that change, Nemo's backpay claim amounts to $26,951, which I find to be supported by the record.

Y. *Alex Proger*

Respondent does not urge any specific deductions from Proger's backpay claim of $14,984,[63] and I find that claim to be supported by the record.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER

The Respondent, Coronet Foods, Inc., Wheeling, West Virginia, its officers, agents, successors and assigns, shall pay to the employees named below the indicated amounts of total net backpay and other reimbursable sums with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and less taxes required by law to be withheld:

Jerry Bane	$81,208
Estate of Michael Fazio	54,347
Estate of Michael	

[59] Logsdon identified only four employers he revisited during the year in question: Sears, East Ohio Regional Hospital, United Dairy, and Nickels Bakery.

[60] In response to a leading question, counsel for the General Counsel elicited Logsdon's testimony that he would not have left Respondent's employ to take care of the child. Without considering the impact on credibility of a leading question to a friendly witness, I conclude that Logsdon's testimony is too speculative to be of probative value.

[61] Brief on behalf on counsel for the General Counsel to Administrative Law Judge Steven M. Charno at 65 fn. 75.

[62] Posthearing reply brief of the Employer at 33.

[63] Posthearing reply brief of the Employer at 25.

Fazio (life insurance)	10,000
Chuck Goudy	89,231
G. Mike Huff	126,254
Bryan Kalinski	43,828
Kenneth Marshall	52,518
Richard Melvin	68,658
John McCave	10,636
John McDonald	60,897
Michael Richmond	25,694
David Rinkes	95,092
David Rinkes (medical expenses)	4,000
Thomas Rinkes	33,816
Thomas Rinkes (medical expenses)	3,452
Spencer Risden	68,024
Mark Smith	43,872
Mark Smith (medical expenses)	1,745
Arnold Trouten	73,788
Larry Young	48,566
William Mayes	22,584
Rickie Pritt	49,430
Randall Reed	21,359
John Wodusky	37,794
Russell Haught	19,611
Mark Hilliard	38,730
Charles Logsdon	26,159
Arley Nemo	26,951
Alex Proger	14,984
TOTAL:	$1,253,228

IT IS FURTHER ORDERED that Respondent shall take the following affirmative action:

1. Offer the above-named employees immediate reinstatement to their former positions of employment or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed.

2. Restore the operations of its transportation department discontinuing, if necessary, its subcontracting agreements and operations.

3. Comply in all other respects with the Order in the above-captioned cases issued on March 22, 1990, by Administrative Law Judge Richard A. Scully and adopted by the Board by Order issued September 30, 1991.